

STATE OF MICHIGAN
COURT OF APPEALS

In re Irrevocable Living Trust of MILDRED
ARLENE LANG, Deceased.

WILLIAM LANG,

Appellant,

v

CHEMICAL BANK, DAVID LANG, and
THOMAS LANG,

Appellees.

UNPUBLISHED

May 4, 2004

No. 247194

Midland Probate Court

LC No. 99-031318-TI

Before: Zahra, P.J., Whitbeck, C.J., and Saad, JJ.

PER CURIAM.

William Lang appeals as of right the probate court's order granting Chemical Bank's motion for summary disposition. We affirm.

I. Facts and Procedure

On August 22, 1983, Mildred Arlene Lang (settlor) established a living trust for the benefit of her sons William Lang (appellant), David Lang (appellee), and Thomas Lang (appellee). Chemical Bank (appellee) was the trustee. Settlor amended the trust three times, each time revising the language of Article 2 ("Disposition at My Death") of the trust. In the third amendment in 1993, settlor gave David and Thomas all of her shares of stock in William E. Lang, Inc. (the corporation), provided David received sufficient shares to give him fifty-one percent of all issued and outstanding shares of the corporation. The remaining shares were to be distributed to Thomas. Thomas was also to receive a sum equal to the value of the shares devised to David that exceeded the number of shares given to Thomas. The amendment also provided that William would receive a sum equal to the value of the shares devised to David. According to the amended trust, "the value of said shares shall be finally approved by the Internal Revenue Service for purposes of federal estate tax" in settlor's estate. Article 14 ("Tax Provisions") of the trust gave trustee the authority "[t]o use those available optional valuation dates for death tax purposes which appear to cause the lowest combined federal and state death and income taxes"

Before settlor's death in February 1997, settlor and David served as officers and directors of the corporation. The trust held 72.5 percent of the issued and outstanding capital stock of the corporation. At the time of settlor's death, the fair market value of this stock, as determined by the accounting firm Burnside & Lang, P.C., was \$422,500, or \$7.20 a share. Between the time of settlor's death and August 9, 1997, which was chosen as the alternate valuation date, the corporation suffered operating losses of \$388,746, which were offset in part by various factors. Burnside & Lang determined that the fair market of 72.5 percent of the stock as of August 9, 1997, was \$364,000, or \$6.204 a share. For the benefit of the corporation, trustee used the alternate valuation date amount when reporting the value of the stock for federal estate tax purposes. The Internal Revenue Service (IRS) accepted that value. In December 1997, trustee made distributions from the trust to the beneficiaries based on the alternate valuation date of the corporation's stock.

In May 2002, William informed trustee that he had concerns about the losses incurred by the corporation between settlor's death and the valuation date. Trustee then filed a petition for authority to complete the trust administration and make final distributions in the probate court. William objected to the petition, arguing that the court should conduct an evidentiary hearing to determine whether the distributions requested by Chemical Bank were fair and accurate and followed the terms of the trust, as amended. In pertinent part, William argued that, in making the distributions of trust assets, it would be more equitable for trustee to use the value of the corporation on the date of settlor's death, rather than the August 9, 1997, alternate valuation date.

Trustee filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing in pertinent part that Williams's objections to trustee's petition should be dismissed because the express terms of the trust required the use of the federal estate tax valuation for distributions. The probate court granted the motion for summary disposition, concluding that, under the express terms of the trust, the trustee properly used the alternate valuation date as a basis for determining the distributions to the beneficiaries. The probate court further determined that there was no factual support for William's argument that the corporation was mismanaged after settlor's death.

II. Analysis

William argues that the probate court erred in granting trustee's motion for summary disposition because there exists a question of fact regarding (1) the validity of the valuation performed by Burnside & Lang, (2) trustee's failure to address the corporation's loss of \$388,746 during the first six months after settlor's death, and (3) the appropriate valuation to use for purposes of final distribution. The probate court granted trustee's motion for summary disposition under MCR 2.116(C)(10). We review de novo a trial court's grant or denial of a motion for summary disposition. *Rose v Nat'l Auction Group*, 466 Mich 453, 461; 646 NW2d 455 (2002). In reviewing the trial court's decision, we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.*

Article 2 of the trust, as amended, states that, in making distributions to the beneficiaries, the trustee must use the value of the shares approved by the IRS for purposes of federal estate

tax. Article 14 of the trust gave trustee the authority “[t]o use those available optional valuation dates for death tax purposes which appear to cause the lowest combined federal and state death and income taxes” This power of the trustee to choose an alternate valuation date for estate tax purposes is supported by MCL 700.74408(1)(a)(iv). Here, trustee exercised its authority under the trust to choose the alternate valuation date of the corporation stock for estate tax purposes in order to obtain the lowest federal estate taxes. The IRS accepted the alternate valuation of the stock. Therefore, under the trust, trustee was required to use the alternate valuation of the stock as the basis for determining the distributions to the beneficiaries. Williams does not argue why the corporate stock’s decline in value between the time of settlor’s death and the alternate valuation date should require trustee should recalculate the beneficiary distributions. Additionally, Williams presents no evidence supporting his argument that the Burnside & Lang valuation was invalid. Therefore, the probate court did not err in granting trustee’s motion for summary disposition.

Affirmed.¹

/s/ Brian K. Zahra
/s/ William C. Whitbeck
/s/ Henry William Saad

¹ This Court dismissed Williams’s appeal for lack of jurisdiction as it pertained to his argument regarding sanctions. *In re Mildred Lang Irrevocable Living Trust*, unpublished order of the Court of Appeals, entered October 1, 2003 (Docket No. 247194).